

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY  
STATE OF OKLAHOMA

MARCELLA M. SMITH  
LARRY D. SMITH

Plaintiffs

vs.

ACE AMERICAN INSURANCE COMPANY  
ASSOCIATED WHOLESALE GROCERS, INC.  
NATIONAL LIABILITY AND FIRE INSURANCE CO.  
G.D. TRANSPORT, INC.  
DONALD L. CREED  
RAJEEV SHARMA  
ERIN ALF

Defendants

DISTRICT COURT  
**FILED**

JUL 21 2010

Case No. SALLY HOWE SMITH, COURT CLERK  
STATE OF OKLA, TULSA COUNTY

CT-09-0-04513

DAVID M. RUEHN

JUDGE

**PETITION**

COME NOW the Plaintiffs, Marcella M. Smith and Larry D. Smith, and for their cause of action against the Defendants, Ace American Insurance Company, Associated Wholesale Grocers, Inc., National Liability and Fire Insurance Co., G.D. Transport, Inc., Donald L. Creed, Rajeev Sharma, and Erin Alf, allege and state as follows:

**JURISDICTION**

1. Plaintiffs are residents of Tulsa, Tulsa County, Oklahoma, and at the time of the accident herein were residents of Tulsa, Tulsa County, Oklahoma.
2. Defendant, Ace American Insurance Company (hereinafter "Defendant Ace"), is a Pennsylvania corporation, and its registered service agent is the Oklahoma Insurance Department, 2401 Northwest 23rd Street, Suite 28, Post Office Box 53408, Oklahoma City, Oklahoma 73152-3408. Defendant Ace issued a liability insurance policy to Defendant AWG, and, therefore, Defendant Ace is bound as a liable party pursuant to 47 O.S. §169.

EXHIBIT

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3. Defendant, Associated Wholesale Grocers, Inc., (hereinafter "Defendant AWG"), is a Kansas corporation, and its registered service agent is The Corporation Company, 120 North Robinson, Suite 735, Oklahoma City, Oklahoma 73102. Defendant AWG regularly operates and conducts business in Tulsa County, Oklahoma. Defendant AWG operates its trucks through Tulsa County, Oklahoma, in the process of delivering and selling its grocery brands, Best Choice, Clearly Organic, and Always Save, on a regular basis to grocery stores in Tulsa County, Oklahoma, including Reasor's and Food Pyramid. That Defendant AWG has debts owing to it in Tulsa County, and therefore, it is proper to bring suit in Tulsa County.

4. Defendant, National Liability and Fire Insurance Company (hereinafter "Defendant National"), is a foreign corporation, and its registered service agent is the Oklahoma Insurance Department, 2401 North 23rd Street, Suite 28, Post Office Box 53408, Oklahoma City, Oklahoma 73152-3408. Defendant National is domiciled in the State of Connecticut with its headquarters in the State of Nebraska. Defendant National issued a liability policy to Defendant GDT, and therefore, the Defendant National is bound as a liable party pursuant to 47 O.S. §169.

5. Defendant, G.D. Transport, Inc., (hereinafter "Defendant GDT"), is a California corporation, and is domiciled in California with its principal place of business in California.

6. Defendant, Donald L. Creed, (hereinafter "Defendant Creed") was a resident of 7640 Farm Road, Willard, Missouri 65781, at the time of the accident herein.

7. Defendant, Rajeev Sharma (hereinafter "Defendant Sharma"), is a California citizen, and was an agent, servant, and employee acting within the scope of his employment for Defendant GDT.

8. Defendant, Erin Alf, (hereinafter "Defendant Alf"), is a Texas citizen.

9. On or about June 26, 2009, Plaintiff, Marcella M. Smith, was a passenger, and the Plaintiff, Larry D. Smith, was the driver of a vehicle proceeding in a easterly direction near mile marker 321 on the eastbound lanes of Interstate 44, also known as the Will Rogers Turnpike, (hereinafter "the Turnpike") in Ottawa County, Oklahoma. Plaintiffs' vehicle had slowed for another accident that had occurred in traffic ahead of them when Plaintiff's vehicle was rear-ended. Plaintiffs' vehicle was a total loss as a result of the rear-end collision.

10. The accident for which Plaintiffs' vehicle had slowed involved Defendant Alf who had hit a truck that was operated and maintained by Defendant GDT, and was being driven by Defendant Sharma. Defendant Sharma had stopped on the shoulder of the highway to check the refrigeration system of his truck's trailer.

11. Defendant Creed was driving, at a high rate of speed, an 18 wheeler truck owned and operated by Defendant AWG, and struck or caused to be struck several vehicles, thereby causing the deaths of ten people and injuries to many more people, the destruction of numerous vehicles, and the closure of the eastbound lanes of the Turnpike for approximately seven hours.

12. On September 21, 2009, in the District Court of Ottawa County, Oklahoma, Case No. CM-2009-00915, ten misdemeanor counts of Negligent Homicide were filed against Defendant Creed. The charges against Defendant Creed were filed as a consequence of the deaths of ten people in the accident that occurred on or about June 26, 2009, on the Turnpike. Said accident is the subject of Plaintiffs' claims herein.

## **FIRST CAUSE OF ACTION**

### **Negligence**

COME NOW the Plaintiffs and for their First Cause of Action against the Defendants, and each of them, incorporate Paragraphs 1 through 12, above, as if fully set forth herein, and further allege and state as follows:

13. Plaintiff, Marcella M. Smith, was a passenger in a vehicle driven by her husband, Larry D. Smith. Defendant Creed negligently breached his duty to operate his 18 wheeler truck in a safe and reasonable manner, and caused serious injuries to the Plaintiff, Marcella M. Smith. Defendant Creed failed to slow and maintain control of his 18 wheeler truck as he drove at an unsafe speed into the slowed or stopped traffic. Defendant Creed's 18 wheeler truck literally ran over vehicles causing vehicles to run into the rear end of other vehicles. Plaintiffs were hit from behind by a sheep trailer with such force that Plaintiff, Marcella M. Smith, sustained serious injuries, including a brain injury, requiring several hospitalizations. Plaintiff, Marcella M. Smith, was knocked unconscious after striking her head, and taken by ambulance to Freeman West Hospital in Joplin, Missouri. Plaintiff, Marcella M. Smith's initial diagnosis was concussion with local and cerebral edema. Plaintiff, Marcella M. Smith has subsequently been hospitalized at St. Francis Hospital in Tulsa, Oklahoma, in guarded condition with swelling and fluid in and around her brain.

14. That Plaintiffs have learned that Defendant AWG and Defendant Creed contend that the negligence of Defendant GDT, Defendant Sharma and Defendant Alf set in motion the chain of circumstances, which were a contributing factor to the Defendant AWG's truck crash and fatal injuries.

15. The collision was caused by the negligence and want of care of Defendant Creed. Defendant Creed was negligent in either or all of the following particulars, to-wit:

- A. Violated the highway safety code rules of the road, including but not limited to 47 O.S. §11-901(B) which is adopted as a motor vehicle statute.
- B. Failed to operate his vehicle as a reasonably prudent person would do under the same or similar circumstances.
- C. Operated his vehicle in a careless manner without regard for the safety of persons properly then and there on said roadway.
- D. Failed to use ordinary care to prevent injury to other persons.
- E. Failed to exercise ordinary care in keeping a proper lookout consistent with the safety of other vehicles and persons.
- F. Failed to obey traffic laws and other rules of the road which will be detailed prior to the trial of this matter.
- G. Failed to maintain control of his vehicle.
- H. Failed to exercise due care to avoid collisions.
- I. Failed to maintain situational awareness.
- J. Failed to devote full time and attention to driving.
- K. Failed to have due regard for the safety of persons and property on the roadway.
- L. Failed to operate his vehicle in a safe manner under the prevailing conditions.
- M. Failed to drive at a safe rate of speed under the circumstances, a careful and prudent speed not greater than was reasonable and proper, having due regard to the traffic and other conditions then existing and at a speed greater than would permit him to bring his vehicle to a stop within the assured clear distance ahead, thus violating 47 O.S. §11-801(A).

16. Defendant Creed and Defendant AWG drove their motor carrier truck in a reckless and wanton manner without regard for the safety of persons and in violation of the conditions outlined in 47 O.S. §11-801 which is deemed reckless driving, and a violation of 47 O.S. §11-901.

17. Defendant AWG is independently liable for failing to properly select, train, and supervise its driver, and for negligently launching Defendant Creed in Defendant AWG's truck at 3:00 a.m. from Springfield, Missouri, when Defendant Creed was not on or adjusted to a night schedule, and Defendant AWG required Defendant Creed to work throughout the day until the time of the collision.

18. Defendant GDT, Defendant Sharma, and Defendant National were negligent in that they made a non-emergency stop on the Turnpike instead of exiting the Turnpike for the purpose of checking the refrigeration system of the trailer. Defendant GDT, Defendant Sharma, and Defendant National were negligent, and had a duty to place warning triangles, or otherwise give adequate warning to the approaching traffic, and as a result of their breach of duties, severe injury occurred.

19. Defendant Alf had a duty to stay awake and alert and drive her vehicle in a safe manner. That Defendant Alf violated 47 O.S. §11-319, in that she side-swiped and careened off the Defendant GDT's trailer causing normal off traffic to be impeded.

20. Plaintiffs allege that they are without fault. The collision and resulting injuries to Plaintiff, Marcella M. Smith, were directly and proximately caused by and due to the negligence and want of care of the Defendants, and each of them.

21. As a result of said accident, Plaintiff, Marcella M. Smith, was seriously injured, and received medical treatment. Plaintiff, Marcella M. Smith, will require additional medical treatment in the future because of the nature and extent of her injuries. As a result of the negligence and reckless, careless, and wanton acts of the Defendants, and each of them, Plaintiff, Marcella M. Smith, has and will sustain physical pain and suffering, past and future, mental pain and suffering, past and future, permanent and disabling injuries, earning capacity, and reasonable expenses for medical care, treatment, and services.

22. Plaintiff, Larry D. Smith, has suffered loss of consortium as a result of the negligent acts of the Defendants, and each of them.

23. Plaintiffs' vehicle, a Chevrolet Tahoe, was declared a total loss, and Plaintiffs were required to pay a \$1,000.00 deductible for replacement of said vehicle. Defendants, and each of them, are responsible for the total loss of Plaintiffs' vehicle.

#### **Punitive Damages**

Plaintiffs incorporate by reference Paragraphs 1 through 23, above, and further allege and state:

24. Defendant Creed and Defendant AWG acted with reckless disregard for the rights of others such that they acted intentionally and with malice towards others. The conduct of Defendant Creed and Defendant AWG would justify an award of punitive damages for the sake of example and by way punishing Defendant Creed and Defendant AWG for the seriousness of the hazard to the public arising from their misconduct.

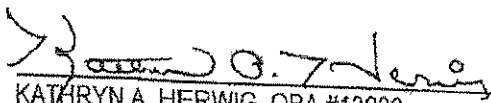


**Prayer for Relief**

WHEREFORE, Plaintiffs, Marcella M. Smith and Larry D. Smith, pray for judgment against the Defendants, Ace American Insurance Company, Associated Wholesale Grocers, Inc., Donald L. Creed, National Liability and Fire Insurance Company, G.D. Transport, Inc., Rajeev Sharma and Erin Alf, jointly and severally, for an amount in excess of \$10,000.00, and against Defendant Creed and Defendant AWG for punitive damages in an amount in excess of \$10,000.00, together with interest and costs thereon, and for such other and further relief as the Court would deem just and equitable.

ATTORNEY LIEN CLAIMED.

MARCELLA M. SMITH and  
LARRY D. SMITH, Plaintiffs

  
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